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January 3, 2018

### MEMORANDUM

**TO: Power Committee**

**FROM: Ben Kujala**

**SUBJECT: Bonneville long-term sales and the call-back provision**

### BACKGROUND:

Presenter: Tim Johnson, Bonneville

Summary: Bonneville has statutory obligations that impact its ability to make long-term sales of power from the federal system. The Council has heard from several sources about the challenges Bonneville faces in current markets. The implication has been that part of the challenge is due to limitations on how Bonneville can market surplus power for long-term sales. Tim Johnson, from Bonneville, will address the statutes implications for long-term sales of surplus power and answer questions that Council members have regarding Bonneville's ability to execute long-term sales.

## **Recall Provision for Sale of Power to Investor Owned Utilities**

- 5 year notice to recall power

Bonneville Project Act, Section 5(a): “. . . (2) in the case of a contract with any purchaser engaged in the business of selling electric energy to the general public, the contract shall provide that the administrator may cancel such contract upon five years’ notice in writing if in the judgment of the administrator any part of the electric energy purchased under such contract is likely to be needed to satisfy the requirement of the said public bodies or cooperatives under this chapter, and that such cancellation may be with respect to all or any part of the electric energy so purchased under said contract to the end that the preferential rights and priorities accorded public bodies and cooperatives under this chapter shall at all times be preserved.”

- Reaffirmed

Northwest Power Act, Section 5(a): “All power sales under this chapter shall be subject at all times to the preference and priority provisions of the Bonneville Project Act . . . and, in particular, sections 4 and 5 thereof.”

Section 5(b)(2): “Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act.”

Legislative statement: “Section 5(b)(2) reaffirms the provisions of the Bonneville Project Act that BPA must be able to reduce its obligations to investor owned utilities upon five years notice. The Committee does expect, however, that BPA can and should be able to provide a long notice period to these utilities to the extent practicable to facilitate orderly planning by these utilities.”

House Rpt. 96-976, Part II, 96<sup>th</sup> Cong., 2d Sess. (Sep.16, 1980), at 47.

## **Surplus Firm Power Marketing Authority**

All sales of federal power, including surplus power, are made consistent with public preference: the requirement to give public bodies and cooperatives -- a first right of refusal to purchase available amounts of power.

The 1964 Northwest Regional Preference Act establishes a preference for PNW customers in all sales of surplus power.

- BPA must make the current draft of any proposed contract available upon a customer’s request.
- All contracts for such sales must include the right for BPA to terminate the delivery of surplus energy on up to 60-days’ notice and surplus capacity on up to 60-months’ notice

when the power is needed to meet the firm requirements power needs of BPA's Pacific Northwest customers.

### **Excess Federal Power**

P.L. 104-46 redefines a portion of surplus power into a new category termed "excess federal power." BPA, at its discretion, may sell such power without certain otherwise applicable statutory restrictions if BPA first makes this power available to PNW customers.

EFP determined by: 1) a reduction in the quantity of electric power BPA is contractually required to supply to its utility customers under section 5(b) and to its direct service industrial customers under section 5(d) of the Northwest Power Act due to the election of these customers to purchase power from other suppliers, as compared to the quantity of power BPA was contractually required to supply as of as of January 1, 1995; and 2) operations of the FCRPS that are primarily for the benefit of fish and wildlife which have been affected by the development, operation, or management of the system.

- BPA may sell or otherwise dispose of excess federal power outside the PNW region on a firm basis for a contract term not to exceed 7 years.
- Before selling the excess federal power for use outside the PNW region, BPA must first offer the power, for a reasonable period of time and under the same essential rate, terms and conditions, to BPA's regional public body, cooperative and investor-owned utility customers identified in section 5(b) and to the direct service industrial customers identified in section 5(d)(1)(A) of the Northwest Power Act.
- After making excess federal power available for purchase by its PNW customers, BPA may market this power to purchasers outside the region without a right to terminate deliveries of energy on 60 days' notice and of capacity on 60 months' notice when such power is needed to meet BPA's firm contractual obligations to its PNW customers.
- BPA may also market this power to other purchasers in or outside the PNW without the restriction on resale to investor-owned utilities.

Regional customers have the ability to purchase federal power as firm load requirements power. If they decline to purchase it as requirements power, they have another opportunity to purchase the power when BPA releases its annual notification of available excess and surplus power. However, BPA will not offer the power to the regional customers unless they request a purchase consistent with the terms contained in the annual notice. Upon a request, BPA will proceed on a timely basis to negotiate a sale for the purchase of the power requested. Absent any requests from regional customers, BPA intends to proceed to sell this abandoned power out of the region to recoup a portion of BPA's revenues lost due to customers not purchasing the power as requirements service.